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A

DISCOURSE

Concerning the
Law of Inheritances
in FEE SIMPLE;

Laid down in a METHOD intirely new;

WITH A
KALENDAR
Of the Persons inheritable.

By the RIGHT HONORABLE
ROBERT ROBINSON, Esq;
Lord Chief Justice of GIBRALTAR.

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In tenui labor est; verbis ea vincere magnum.

A New and Improved EDITION.

In the SAVOY:

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P R E F A C E.

THIS little Treatise makes its Appearance in the World under no weightier or worthier Motive; than merely for the sake of the Method that hath been pursued and observed in it.

I HAVE indeed always thought, that the Argument of which I treat, was a Subject of the greatest Dignity, and Importance; and of equal Difficulty. And although I am sensible, that it hath been already well handled by Persons of great Name, and of the most venerable Distinction; yet am

I not without Hopes, but that the Advantages of the Method, I have introduced, will be every where so very visible; and will be thought of such a Nature; as to justify me in the Review I have made of this sort of Learning; and in this Attempt to reduce it into a better and more systematical Order. The Learning which relates to this Subject, once concerned the *Propriety* in, and Right of *Ownership* to very near all the Lands in the Kingdom (1); and now affects that Property in the general Circumstance; and may do eventually in the Total (2). In the Prosecution of this Inquiry, I have not thought it ne-

(1) Before the making of the Statute of *Westm. 2. Cap. 1.* all Inheritances were *Fee Simple*.

(2) See *Litt. sect. 19.* and *Co. Litt. fo. 22. b.*

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cessary to warrant, or authenticate, every Case; by a Reference to the Books: Imitating, in this, the Conduct of Lord BACON; in his Book; intituled, *The Elements of the Law*; and Lord Chief Justice HALE; in *his Discourse of Descents* (3): The former of which gives the following Reason; in his Preface, for following and adopting this Method.

“ IN not quoting Authorities; I
 “ have the Exemple of *Littleton*; and
 “ *Fitz-Herbert*; whose Writings are
 “ the Institutions of the Laws of
 “ *England*; whereof the one doth
 “ forbear to vouch any Authority;
 “ altogether; and the other never
 “ citeth a Book; but where he think-
 “ eth the Case so weak of Credit;

(3) See the History of the Law.

“ in

“ in itself; *as to need a Surety*; besides, I think it a Matter undue and preposterous to prove Rules and Maxims.” And as this Procedure, in omitting *Quotations*; in a Subject of this Nature, and Tendency; comes recommended by the Authority and Exemple of so very learned and wise a Man; as Lord Chancellor *Bacon* is universally acknowledged to have been; I think, that I need no other Apology, for it.

It may perhaps be objected, that now fewer Difficulties occur; with relation to this Subject; than heretofore; as Inheritances are seldom left to fluctuate among the Kindred of the Purchaser according to the *Disposition* and *Polity* of the *Law*; but are, for the very most part, limited and bound down, by *Wills*, and Settlements,

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ments, to go according to the *Discretion* and *Affection* of the *Donor* (4); and, that, therefore, a Treatise of this Kind is now rather a Matter of Curiosity; than of any real Use, or Service.

It may be alleged, that even before *these Provisions* took place; (in regard to the Infrequency of a *Coelibate-Life*; and in regard to the Command and Blessing of GOD to his People; [*Crescite & multiplicamini*]; being in all Ages so universally obeyd; and happily advanced; it hath seldom happend, that there hath been occasion to calculate, or consider, (that wherein, indeed, the only Difficulty consists; *viz.*) the Degree of

(4) See 32 Hen. 8. Cap. 1. and 34 Hen. 8. Cap. 5. and third Report 30.

Relation,

Relation, or Consanguinity, in which the remote collateral Ancestor stood to the Purchaser; and to the Person who was last seisd of the Inheritance; and to settle and adjust the Right and Claim of the Descendents from such remote collateral Ancestor; pursuant to such Calculation. But, however, as Provisions by Wills, and Settlements, do not always take place; and where they do not; as Cases of a very intricate and perplexing Nature do, sometimes, occur; (and, that they do sometimes occur; is a Fact within the Knowledge and Experience of every Practiser;) I have laid down from adjudged Cases; and from received, and approved, and establishd, and ancient Maxims; how the Law stands, at this Day; with relation to all the Variety of Accidents that can possibly

bly attend the Transmiffion and De-
fcant of the Inheritance, in the Fa-
mily of the Purchafor.

AND if it fhall appear that I have
penetrated deeper into the *Subject* ;
and have treated it in a greater La-
titude ; and larger Extent ; than any
Writer before me, hath ever done ;
this Excellence, or this Perfection, is
folely to be afcribed to the Benefit
and Advantage of the Method I have
pursued. And I reft fully affured
that I have laid down nothing ;
through the whole Work ; but what
comes well warranted ; and ftictly
authorized by the Rules and Maxims
of Law. Where the Books indeed
do not point out the Law with a
convenient Certainty ; I refer fuch
Cases over---with a *Quaere* ? [or an---
it fhould feem---] thereby intimating
a that

that the Cases where a *Dubitatur* is hinted in some such manner; as is abovementiond; are not sufficiently authorized; although I conceive, that even the Cases thus *quaeried*, are not altogether unauthorized; but that they are Consequences drawn, with great Probability, and Propriety, from such Hints, and *Adumbrations*, of ancient Authors; and from such Principles and *Vestigia* of ancient Learning; as are extant upon this Subject; (or to speak in the Language, and after the Manner, of *Grammarians*;) I conceive that these very Cases which are thus *quaeried*; for the Reasons aforesaid; yet hold a strict Analogy, and full Congruity, with the Rules and Principles of Law.

THE Method I have laid down, is
calculated for the more commodious
Conveyance

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Conveyance and better *Tradition* of this abstruse and knotty Science. And I apprehend, that I have so orderd and disposed it, that there will not be the least Difficulty, and very little Application necessary, to understand it, perfectly. And, in my humble Opinion, this *Vehicle* will greatly assist and enlighten the Understanding; in forming its Conclusions; it being, in all Respects, so very clear, and so very expedite, and disembarraßd. And, if I may be allowd, freely, and ingenuously, to confess my Sentiments; I do not find, either, in the Books of the *Civilians* or of the *Common Lawyers*, that the Use and Application of the several *Genealogical Tables* that are exhibited in their Works, are any where sufficiently explaind; or fully, or duely, inculcated. They have, indeed, where particular

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particular Cases have demanded their Diligence, and Attention, taken a very accurate Survey of all the Facts which were proper for their Consideration ; in order to a just and equitable Decision of such Matters: But neither the one nor the other have taken care, that their *Tables* should be accompanied with a clear Designation of the several *Personages* contained in them ; or with a clear and distinct Account of the *Relation of Consanguinity* in which such *Personages*, or *Relatives*, respectively stand in, to the *Person proposed* (5). But where they found, that the Terms---*Avus*---*Avia*---&c ; (*viz.* Grandfather---Grandmother---&c.) was not a *philosophical Language* ; or a *Mode* of speaking which was duely, or properly, ascertained ;

(5) See *Plowd.* 449.

or which was *precisely*, or *scientifically*, adjusted; they have reduced their Sense to a Certainty; by saying--- the Father of the Father --- or the Father of the Mother; --- or the Mother of the Father --- or the Mother of the Mother, &c. of *any Person proposed*. But notwithstanding the several *Tables*, which are extant in their Works; they are sometimes obliged, in tracing a Descent, to use a much more tedious and circuitous Way of Description; than this that follows; *Æmilius*, or *Æmilia*, was the Brother, or Sister, of the Mother of the Father of the Father of the Father of the Purchaser: Now, (instead of all this tedious and needless Multiplicity, and Accumulation, and *Surcharge*, of Words;) it will be sufficient, under the Advantage and Accommodation of the Method I have introduced;

--*briefly*

--*briefly* to recurr and refer to the Kalendar, which is here exhibited; and which will be a most effectual Means of greatly abridging the Works of *future Writers*; upon this Subject; as whole Pages may be express'd by a *single Letter* of the *Alphabet*; or (at the very most;) by using two or three Words; or by a *single Line*. But, however, as I must allow that it is by no means reasonable that the Merit or Usefulness of a Performance should be settled, or estimated, by the Prepossessions, or Professions, of the *Author*, in favor of it; I beg leave to close this Prefatory Address; with assuring the *learned* and *judicious* Reader of *this Essay*, that I absolutely *rest* the Fate of it in his Judgment; leaving him at full Liberty (after he hath examined the Facts, laid down in it, with Application, and Attention;

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tion; if it may be thought to deserve the Honor of such an Examination;) to pursue such Conclusions; as please him, most. And whatever shall happen to be the Fate of this Performance; under such a Circumstance of Proceeding; I shall very readily and respectfully adopt the Judgment and *Conclusions* of *such Readers*; for my own; being desirous to entertain no better, or higher, or other, Opinion of the Work; than what comes strictly warranted and recommended by the concurrent Testimony and Sanction of the very best, and wisest, and soundest Judgments.

Lincoln's Inn,
27 August 1736.

T H E

T H E
Author's Advertisement
to the READER;
Concerning this present Edition.

IN this New Edition which I have been solicited to give of this little Book; I have thought fit to make some few Alterations; in the Method that was used, and pursued, in the first Edition of it; in Hopes that the Alteration and Change of my Method; which will appear to have been made, in some very few Particulars, in this present Edition; will still, more and more, conduce to the more commodious and better Delivery and Illustration of the *Argument*; I have in Hand; and will (although these *very few* Alterations that have been *thus* introduced, into this new Edition of this Work, will be found not to have been, absolutely, or essentially, necessary; however,) greatly assist in *reflecting* a better and further Light; and a still greater Perspicuity upon the Subject; by causing the Reader to apprehend it with far less Trouble; and with far greater Ease, and Facility.

Lincoln's Inn,
19 Decem. 1754.

Robert Robinson.

T H E

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[N. B. There is an Error of the Press which hath crept into the sixth Line of Page 55; therefore, in the sixth Line of that Page; instead of *first*, read *third* Rule;]

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Of

OF DESCENTS, in FEE SIMPLE.

The FIRST CHAPTER

Teaches and explains the Use and Application of the Kalendar; so far forth; as to shew the Use, and Intention, of the Columns; and of the several Cells, and Classes; which we have introduced into it. It likewise shews the Relation of Consanguinity which the Personages, or Relatives, who are comprized in the Kalendar, bear to every Person of whom we propose to treat; and how the Kalendar is capable of being indefinitely extended, &c.

IN the following *Essay*, we have thought proper, on all Occasions, to refer, and *recurr*, to the Kalendar; which we have here exhibited; as being of Opinion that this Expedient will greatly assist, and
B conduce,

conduce, to the better evincing and clearing the *Argument*, which we have in Hand: We have therefore according to the Laws and Requisites of just Method; as we conceive; begun with teaching and explaining the Use and Application of the Kalendar.

AND, with regard to the great Number of Lineal Ancestors from whom every Person is generally, and ordinarily, descended; and by reason of the extremely multifarious and complicated Relations from thence arising; and thereupon depending (*a*); the Kalendar will, in our Opinion, be best explaind in the following Method.

THE

(*a*) Nemini unquam contigit gigni, five nasci, nisi ex uno tantum Patre, & ex una tantum Matre; neque, secundum legem naturae, ullo alio modo fieri, vel contingere, potest. Et quilibet honestè natus, per legem Dei, & Ecclesiae, à duobus Avis, & à duabus Aviis, procreari, & nasci, debet. Et omnes, nisi ubi Confanguinei & Confanguineae inter se commisceantur, & ex mutuò copulentur, & jungantur, sunt derivati, & proficiuntur, à quatuor Proavis, & à quatuor Proaviis; & ab octo Abavis, & ab octo Abaviis; &
ex

THE Kalendar then consists of three Columns; and of a distinct and definite Number of *Cells*, or *Classes*; respective to each Column.

EVERY PERSON OF WHOM WE PROPOSE TO SPEAK; and the *German* Brothers and Sisters (*viz.* the Brothers and Sisters of the *whole Blood*) of every such Person, are placed, or stationd, in the LOWEST CLASS of the second Column; which we have denominated and calld the CENTRAL CLASS; (for this Reason, *viz.*) because EVERY PERSON OF WHOM WE PROPOSE TO TREAT, is the Subject, or *Terminus*; or the CENTRE; to which all the other Relatives, or Personages, who are containd, and comprehended, in the Kalendar, do necessarily *adhaere*, and refer; and from

ex sedecim Atavis, & ex sedecim Ataviis; atque ex triginta & duobus Tritavis; & ex tot Tritaviis; quot Tritavi; &c. &c. Numero Parentum, si unus duntaxat addatur gradus; & quotiescunque additur unus gradus, semper duplicato.

whence their Relation, and Degree of Kindred, and Consanguinity, is respectively defumed, and derived, and calculated: The Kalendar comprehending the Father, and Mother, of every Person of whom we propose to treat; and the *Paternal* Grandfather, and *Paternal* Grandmother; *viz.* the Father and Mother of the Father of every such Person; and *such* other remote lineal Ancestors, or *Ascendents*; and the *German* Brothers and Sisters; and likewise the *Paternal* and *Maternal* Uncles and Aunts of every such Person; for so many Degrees; and in such Order, and Manner; as is therein particularized; and set forth; and as will yet more fully and clearly appear, in the Sequel of this Discourse.

WE have thought fit to denominate, and distinguish, the Cells, or *Domicils*, in the second Column; which are placed above the central Class; by the Name and Title of *ascending Classes*; or of the *ascending Scale* of the *second Column*; with relation to their containing such lineal Ancestors,

or

or *Ascendents*, of every Person of whom we propose to speak ; as we have shewn, and described, to be comprehended, and included, within the *ascending Scale* of *that Column*.

THE ascending Classes contain the lineal Ancestors (Male and Female) of every Person who is contained in the central Class ; in every Degree ; for six Degrees, inclusive ; in the Paternal Race, or Lineage (*b*). And *note*, That the Wife, or *Feme*, of every lineal *Male* Ancestor who is placed in any *ascending* Class, is always comprehended in the same Cell, or Class, with him,

BUT *note* further, That this Remark (or Privilege) only extends ; and is no otherwise applicable, than to the lineal Ancestors, or *Ascendents*, of the second Column ; as *Baron* and *Feme* do not *cohabit* ; but are excluded from all the other Classes of the

(*b*) We propose to shew--- what constitutes a *Degree* of Consanguinity, in the Sequel.

Kalendar ; (saving only the ascending Scale of the second Column).

THE Grandfather and Grandmother who are placed in the second ascending Class, are the Father and Mother of the Father of every Person of whom we propose to treat. And the Great Grandfather and Great Grandmother who are placed in the third ascending Class, are the Father and Mother of that Grandfather, &c. The higher ascending Classes respectively containing the Father and Mother of the lineal *Male* Ancestor who is placed in every respective *ascending* Class which is *next below* such higher ascending Cells, or Classes, respectively ; and do likewise respectively contain the Father and Mother of both *Males* and *Females* who are comprized in every Cell or Class of the *first Column* which is *next below* every such higher ascending Cell or Class, respectively. And the Cells, or Classes of the first Column respectively, contain the *German* Brothers and Sisters of the *Male* who is placed in the respective Parallel, or directly opposite, *ascending* Classes.

(7)

Classes. And the third Column contains the *German* Brothers and Sisters of the Wives, or *Femes*, who are placed in the directly opposite or parallel ascending Classes.

NOTE, This Kalendar may be further enlarged, and extended ; as often as Occasion requires ; and even indefinitely ; by superadding and superinducing Cells, or Classes ; and by augmenting and multiplying the Number of them (*upwards* ; or) in the *ancestral* Line of each Column.

WE have refused a Place in the Kalendar, to the Issue and Descendents of every *Person of whom we propose to treat* ; because, after having given the Business a full and mature Consideration, we have judged and concluded it to be quite unnecessary, and even nugatory, to insert, or introduce, any *descending Scale* ; or any *descending* Cells, or Classes, into the second Column ; as such descending Classes would be of no sort of Use ; or Service ; unless (peradventure) by way of supplying the Place, or Office, of a *Vocabulary*, or *Nomenclator* ; in

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giving Names; and *Appellatives*, to the Descendents, *in every Degree*; and in reporting the *Order* and *Series* of every Succession, or Generation, of such Descendents; (which Aim, or Intention, would be performed very darkly, and confusedly, even, by a *descending Scale*.)

BESIDES, the Rules we have laid down, in the Sequel of this Discourse, have, in our Opinion, defined, and described, the Right of *Succession*, to Inheritances, in *Fee*; and the Course, and Order, of the *Descent*; and the Manner of the Derivation, and Transmision, of *these Inheritances*, among and upon the Descendents of every Person, who dies seisd of them; so very fully; and copiously; as, absolutely, and intirely, to supersede, and avoid, the Necessity of recurring to the Kalendar; for further Proof, or *Elucidation*.

WE have likewise left the Relatives of the *Half-Blood* out of the Kalendar: For as that Order of Consanguinity, or Relation, which is thus denominated, always,
arises,

arises, and must necessarily grow, and be deduced, from such *Ascendents*, or lineal Ancestors, Male, or Female; as have Issue by different and distinct Marriages; we have, therefore, conceived that the Course and Order of the Descent, and of the Transmission and Devolution of the Inheritance among and upon the Relatives of the *Half-Blood*, viz. upon the *Semigerman* (c), and *Uterine* Relatives; is sufficiently declared and described by the Rules.

No

(c) Although I do not find that the Word [*Semigerman*] is used in the *Civil Law*; yet have I ventured to *adopt* and admit the Use of it in Preference to any other Term; that occurs in our Books of *English Law*; to denote the Relatives of the *Half-Blood* in the *Paternal* Lineage; because it seems to me that if the *Civilians* have used the Word, but sparingly; and very seldom; or if they have (which I rather take to be the Case) rejected the Use of it; altogether; yet this Accident is not to be referred, or ascribed, to any Impropriety, or Unsuitableness, in the Term; in the Sense and Meaning to which I would apply it; but because, in fact, (as they admit no such *Relative*) they had no Occasion to use, or appropriate, the Expression in the Manner, or to the Purposes, I have done. In the *Roman Civil Law*, the

C

Issue

No Person, or Class, is supposed to *fail*; so long as such Person, or Class, is repre-

Issue of the Father by a different Marriage, are denominated *Consanguinei* to each other; and the Descendents from, and Issue of, the Mother by a different Marriage, are termed and stiled *Uterini* to each other. And although it must be confessed that neither *Fratres consanguinei*, nor *Sorores consanguineae*, nor *Fratres uterini*, nor *Sorores uterinae*, even, in the Computation and Respects of the *Roman Civil Law*, are capable of succeeding equally to Lands of Inheritance, with *Fratres Germani vel Sorores Germanae*; (*viz.* with such Brothers and Sisters as are of the whole Blood;) *in quibus inest Virtus duplicati Sanguinis*; neither are the *Consanguinei*, or *Uterini*, in the Computation and Respects of that Law, admitted to have equal Worthiness of Blood with the *Germani*; yet, most assuredly, the *Consanguinei* and *Uterini* ought to be reckoned and accounted to be as much of the whole Blood; as the Descendents from any of the Persons who are comprized in the first and third Columns; as the *collateral Ancestors* (both Male and Female) who are placed in the first and third Columns, ordinarily intermarry with Persons who have no Consanguinity with the Person proposed. And certainly it is highly just and reasonable to prefer the Issue of the Father, or of the Mother, by different Marriages; to any Person who is comprized in the first and third Columns, &c.

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(11)

sented in any Descendent. And *note*, I use the Word [*extinct*]; as well to denote, and signify, that the Persons, of whom I speak, were never in *Esse*; as where they are dead without Issue.

WHERE it is said that the Inheritance goes to the Descendents of any particular Person; it is then to be understood to go to, and to devolve upon, such Descendents, pursuant to the Rules (*d*).

THE Reader is further desired to take notice that I always speak in the Language of the Kalendar; and so as necessarily to refer to it, on all Occasions: For Instance, I use and appropriate the *Capital Letters* of the *Alphabet* which I have introduced into the respective Classes of the first Column; as a more concise and summary Way of denoting and pointing out the Cells, or Classes, in which such Capital Letters are contained, and included. And therefore

(*d*) The Rules are described and laid down in the Sequel.

where it is said, that the Inheritance goes to any Capital Letter ; the Inheritance is, in that Case, to be understood to vest in, and to devolve upon, the Relatives who are contained in the Cell, or Class, wherein such Capital Letter is included ; PURSUANT TO THE RULES.

WHERE it is said, for Instance, that the Inheritance goes to A. the Inheritance, in that Case, devolves upon the Relatives who are contained in the first Class of the first Column ; pursuant to the Rules ; *viz.* to the eldest Male in that Class ; and to his Descendents, after his Death ; in such Manner ; as is described, and laid down, in the Rules ; and where there is no Male in the Class upon which the Inheritance devolves ; nor Descendents from any such Male ; as aforesaid ; then, in that Case, the Inheritance devolves upon all the Females ; who are contained in that Class (*e*).

(*e*) See the Rules ; for a more full and exact Knowledge of all the Particulars relating to these Matters.

I PLANT

I PLANT every Person, of whom I propose to speak, in the central Class; making the Kalendar convertible; and wholly to depend upon the Person proposed.

AND, as the lineal and collateral Ancestors of the several Wives, or *Femes*, which Wives are placed, together with their several Husbands, in the same *ascending* Class with them, could not conveniently be introduced into the Kalendar; this Deficiency in the Kalendar, hath been accommodated and remedied by a proper and suitable Expedient. Each *Feme* (or lineal Female Ancestor) who is contained in the ascending Scale of the second Column, is, as often as it hath been thought necessary to resort to this Expedient, considered and treated as the *Person proposed*; and then, and as often as it so happens; they are, consequently, and of course, placed in the *central Class*; and then, and in that Case, the next *ascending* Class to it, will contain the Father and Mother of such *Feme*, or lineal Female Ancestor, who is thus placed in the central Class.

Class. And the Kalendar will, under this Expedient, comprehend the lineal and collateral Ancestors of all the *Femes* who *inhabit*, or are stationd, in any of the ascending Classes. For Instance, where the *Feme* in the highest *ascending* Class, (or the Great Grandfather's Great Grandmother, in the second Column;) is the Person of whom we propose to speak; she, as such, and under the Respects and Denomination of being the *Person proposed*; is placed in the central Class; and then the next *ascending* Class to that Class, will contain the Father and Mother of such Great Grandfather's Great Grandmother. And the Kalendar, consequently, under this Expedient, will contain the lineal and collateral Ancestors, and other collateral Relatives of such Great Grandfather's Great Grandmother; in such Manner; and for so many Degrees; as is therein described, and exhibited. And *note*, that where the *Baron*, or lineal *Male* Ancestor, or Great Grandfather's Great Grandfather, in the highest *ascending* Class; is treated as *the Person proposed*; and where he under the Respects and Denomination

of being the *Person proposed*, is placed in the central Class; then the ascending Class which is next *above* the central Class, will contain the Father and Mother of such Great Grandfather's Great Grandfather; so that by this *Rotation*, and *Volubility* of the Kalendar; no less than by it's Aptitude and Capacity of being indefinitely extended; (and, indeed, it is already literally true of it; without resorting, or recurring, to either of these Expedients; but then;) even, in the Latitude of the Poet's Meaning; by the Means and Advantage of the Kalendar; which we have here exhibited;

*Et Avi numerentur Avorum,
Et Nati Natorum, & qui nascentur ab illis!*

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The SECOND CHAPTER

Shews the Use of the Numerical Figures which are inserted in the Kalendar ; in proving the several Ranks and Orders of lineal and collateral Ancestors ; and the Use of the Asterisks ; in shewing the Degrees of Consanguinity ; pursuant to the Roman Civil Law ; as likewise what makes a Degree of Consanguinity ; according to that Law ; and what according to the Canon Law : Shews likewise that the Quantum of Consanguinity abates one full Half in every Generation, or lineal Transmission (after Sons and Daughters ;) shews who are lineal and who collateral Ancestors.

THE Numerical Figures which we have inserted in all the Classes of the Kalendar, but the central Class ; serve equally to shew the Number, Order, and
Series

Series of the Cells or Classes which are placed in each Column; and the several Orders and Degrees of *lineal* and *collateral* Ancestors; *viz.* who are *Parents*, or *lineal* Ancestors, of the first, or second, or third, or of some other more distant and remote Order; and who are *Uncles*, and *Aunts* of the first, or second, or of some other more remote Order; the *Series* and Order of such *lineal* and *collateral* Ancestors being exactly and *graphically* described, and markd out, by the *Numerical* Figure which is inserted in each ascending Class; and in every Class of the first and third Columns.

THE *Asterisks* which we have likewise introduced into the Kalendar, shew, pursuant to the *Roman* Civil Law, the several Degrees of Consanguinity; and at what Distance, with Reference to those Degrees; the Relatives who are placed, and stationd, in each Class of the Kalendar; are respectively, from every Person, of whom we propose to speak. But although the *Degrees of Consanguinity*, as they are computed

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and laid down in the *Roman Civil Law*; are only intended to be shewn by the *Asterisks*; yet it happens, by mere *Accident*, that both the *Figures* and the *Asterisks* that are inserted in the respective *ascending* Classes of the second Column, answer, and concur, in proving the several Degrees of Consanguinity, pursuant to the *Roman Civil Law*; as well as who are Parents of the first, second, and third Order, &c.

BUT it is otherwise with relation to the *first* and *third* Columns of the Kalendar; the *Asterisks* and the *Figures* having their distinct and respective Uses and Employments in the first and third Columns. The Rule of the *Roman Civil Law* for finding the Difference in the Degrees of Consanguinity, in the *direct* and *collateral* Lines, is, to this Effect (*f*); viz. that there

(*f*) D. 50. 17. 8. § 1. j. ff. de gradibus Affinitatis. In Arbore civili, in collateralibus non constituitur primus Gradus; ut Frater & Soror sunt proximi collaterales; & de Jure civili, tamen, in secundo Gradu sunt. Ratio est secundum regulam Juris civilis quae dicit, quod unaquaeque Persona adjecta constituit novum Gradum: Idèò quia

there are so many Degrees; as there are
Persons begotten; without reckoning the
common

quia ego sum Patri meo in primo Gradu, si nascitur postea alius ex eodem Patre Soror vel Frater; ex generatione istius, causatur novus Gradus; & per consequens appellatur secundus. In JURE CANONICO in collateralibus constitui potest primus Gradus. C. ad sedem XXXV. q. v. ut Frater & Soror sunt proximi collaterales; & tamen de Jure civili in secundo Gradu sunt: de Jure verò CANONICO sunt in primo Gradu: Jus enim Canonicum tantum illud considerat, quòd duo Fratres aut duae Sorores tribuunt initium transversali lineae; & ideò in primo Gradu illius lineae eos constituit.

PRIMA REGULA de ASCENDENTIBUS & DESCENDENTIBUS secundum Jus civile.

Tot sunt Gradus quot sunt Personae, connumeratis intermediis, una Persona dempta: Exempli gratia, Filius meus est Patri meo in secundo Gradu; quia numerando à Persona Filii mei ad Patrem meum, reperiuntur tres Personae; unâ demptâ remanent duae; & sic in secundo Gradu. Nota, in ASCENDENTIBUS & DESCENDENTIBUS nulla est Differentia inter JUS CIVILE & CANONICUM: datur enim eadem Regula, utrinque.

SECUNDA REGULA de Collateralibus in linea aequali. Tot sunt Gradus quot sunt Personae, stipite dempto: Exempli gratia;

In linea aequali, Filius meus & Fratris mei Filius sunt in linea aequali; quilibet enim distat à stipite;

common lineal Ancestor ; from whom all are descended ; to produce an *Exemple* in the direct Line ; there is *Titius* ; and the Father and Grandfather of *Titius*. Now without including the Grandfather of *Titius* ; the Father of *Titius*, being born, makes one Degree of Consanguinity, from

scilicet à Patre meo in secundo Gradu, per primam Regulam. Si ergò nunc quaeratur quoto Gradu Fratris mei Filius distet à Filio meo ; numerandae sunt quinque Personae ; Filius, ego, & Pater meus ; (& sic Stipes ;) deinde Frater meus, & Fratris mei Filius ; dempto stipite remanent quatuor Personae : ergò, juxta hanc Regulam nostram, sunt in quarto Gradu.

Tertia Regula de Collateralibus in linea inaequali.

Eadem Regula habet locum in linea inaequali ; videlicet tot sunt Gradus quot sunt Personae, stipite dempto : Exempli gratia ; Fratris mei Filius & ego sumus in lineâ inaequali collateralis ; ego enim per primam Regulam disto à Patre (scilicet meo) in primo Gradu : Fratris verò mei Filius distat à stipite (meo scilicet Patre) in secundo Gradu ; si nunc oriatur quaestio quoto Gradu Fratris mei Filius distet à me ; numerandae sunt Personae ; scilicet ego, Pater meus (qui est stipite) & deinde Frater meus, ac Fratris mei Filius ; inveniuntur autem quatuor Personae ; dempto stipite remanebunt tres ; & sic sumus in tertio Gradu.

the Grandfather of *Titius*. And *Titius*, the Grandson, being born, makes the second Degree of Consanguinity from the Grandfather. Then in the collateral, or *transversal* Line; if it is askd---how many Degrees *Titius* differs from his Brother? The nearest common Male Ancestor is their Father who begot *Titius*, who made one Degree of Consanguinity; then the Father of *Titius* begot the Brother of *Titius*, who made the second Degree of Consanguinity; so there being two Persons propagated by the common Ancestor; it will follow, that *Titius* is distant from his Brother in the second Degree of Consanguinity; and, that the same *Titius* is distant in four Degrees of Consanguinity from his Uncle's Son: For the Father of *Titius* begot *Titius*; making one Degree: The Grandfather of *Titius* begot the Father of *Titius*; which constitutes the second Degree of Consanguinity: The Grandfather of *Titius* begot the Uncle of *Titius* who is the third Person produced; and constitutes the third Degree of Consanguinity; and the Uncle of *Titius* begot *his own* Son; which

which makes the fourth Degree of Consanguinity.

IT hath been already observed, that the foregoing Calculation of the Degrees of Consanguinity, is pursuant to the Rules of the *Roman Civil Law*. But *Titius* by the *Canon Law*, is only at the Distance of one Degree of Consanguinity from his Brother : For the *Canon Law* places the Brothers and Sisters in the first Degree of Consanguinity in the *transversal* or collateral Line ; because the collateral or *transversal* Line, always, first commences in two Brothers, or in two Sisters, or in a Brother and Sister : And therefore as the collateral, or transversal, *ancestral* Line (in the first and third Columns of the Kalendar,) commences in the Uncles and Aunts who are respectively comprized in the *lowest* Classes of the first and third Columns ; we have thought fit to denominate such Uncles and Aunts to be *collateral Ancestors* (or Uncles and Aunts) of the *first Order* ; pursuant to the *Canon Law*.

IN like manner we have denominated (pursuant to the *Canon Law*) the *Great Uncles* and *Great Aunts* that are placed in the *second* Classes of the *first* and *third* Columns respectively; (and who are collateral Ancestors in the fourth Degree of Consanguinity by the *Roman Civil Law*) to be Uncles and Aunts of the second Order pursuant to the *Canon Law*; being the Brothers and Sisters of the *Grandfather* and *Grandmother* in the second *ascending* Class; who are Parents in the *second Degree*, &c.

THE Progression and Descent of Blood is such; with regard to every Generation or lineal Succession *after Sons and Daughters*; that the *Quantum* of Consanguinity, to the original Stem, is abated and impaired by every Generation, or lineal Succession, one full Half; but yet so; as to be capable of infinite Gradations, and Declinations; without any Possibility, that the Relation of Consanguinity to the original Stem, should ever be totally absorbed, or exhausted: The Child being generated and produced from
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the Blood and *Stamina* of its *Father* and *Mother*; [*ex utroque Parente fusus & satus*,] there immediately ensues and commences a *Totality*, or Intireness, of Consanguinity between the Child and its *immediate* Parents. But between the Grandchild and the Grandfather and Grandmother of such Grandchild, there only remains a *Semitotal* (or Half of that Total) Relation subsisting. And between the Great Grandchildren and the Great Grandfather and Great Grandmother of such Great Grandchildren there only remains or subsists *one fourth Part* of that *total Relation* which every Child bears to its Father and Mother, &c; the *Quantum* of Consanguinity decreasing, and declining *one full Half*, in a *Geometrical Measure* and Proportion; in every *Generation*, or *lineal Transmission*; as hath been already noted.

EVERY Person who is descended or propagated from the *same Stem*; (*viz.* from any Male, or Female, lineal Ancestor,) from whence any other particular Person is descended, or propagated; and who is nei-
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ther the immediate Parent, nor the Progenitor, nor the Progeny of such particular Person, is properly and aptly denominated or defined to be a *collateral Relative*. And *note*, the *Relation collateral* is always *reciprocal*: The Nephew, for Instance, is the collateral Relative of the Uncle; and the Uncle is the collateral Relative of the Nephew, &c.

It will perhaps prove no disagreeable Amusement to the Reader of this *Essay* (if it should not at the same time tend to fix and settle the Matter more completely and clearly in his Understanding) if I should attempt to explain and exemplify this *Rule or Aphorism* by the Kalendar: The Reader will therefore be pleased to observe, that every Cell, or Class, in the first Column, and all the Descendents from every Person who is containd in every such Cell, or Class, of the first Column respectively are the collateral Relatives of the *Male* who is containd in the Cell or Class which is parallel to it in the second Column; and that

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every Cell or Class in the first Column, and all their Descendents, are the collateral Relatives of the *Male* who is placed in the second Column below such Classes of the first Column respectively; and of both Males and Females who are placed in the *central Class*; and that they are likewise the collateral Relatives of all the Descendents (both Males and Females) from such central Class; and that every Cell, or Class of the third Column, and all the Descendents from such Cells or Classes in the third Column, are the collateral Relatives, on the Female Side, (*viz. per Matricem*) to every lower, or subordinate Cell, or Class, in the first Column; and to the *Feme* who is placed in the parallel Cells, or Classes respectively of the second Column.

AND *note*, That where any Person is the collateral Relative of any other Person, all the Descendents from such Persons reciprocally and respectively are collateral Relatives. And *note* further, That every Person who is descended, or propagated from
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the same Stem, from whence any other Person is descended, or propagated; and who is not the *collateral Relative* of such other Person, must necessarily be either [his, or her,] lineal Ancestor, or Descendant.

The THIRD CHAPTER

Gives a Definition of the Term, Fee Simple; shews the extensive, durable and noble Nature of that Sort of Tenure; and likewise shews the Estate that vests in every Purchafor; defines the Word --- Heir, &c.

I Now procede to shew how Lands in *Fee Simple*, descend from the Purchafor; and how the Right and *Ownership* to them devolves upon, and is acquired by, the Relatives, or *Consanguinei*, of the Purchafor, by Right of Inheritance; and in a regular and orderly Course of Succession; according to *legal* Proximity, and Worthiness, of Blood. And first, I will begin with giving a Definition of the Term, FEE SIMPLE:

FEE SIMPLE, then, is so calld, and denominated; because it is that Sort of *Tenure*, or Kind of Inheritance, which contains in itself the *Matter*; and is the *Genus generalissimum*; out of which all other [particular] Estates, in Lands, and Tenements, are defumed, and supplied; as from their true, and original, and only Source, and Fountain: And, therefore, it is calld *Fee Simple*; [*Feodum simplex*; *quasi ex dicto simpliciter*; *sive ex dicto generaliter*, & *absolute*:] *Fee Simple* being a most pure, ample, beneficial, and *unrestrained*, Estate of Inheritance; and being, as was said, in effect, before; the *Substantive*, or *Total*, from whence all other Estates, in Lands, and Tenements, are created, and derived: Wherefore none can have a better, or larger, or nobler, or more permanent Freehold, Possession, or *Propriety*; than *Fee Simple*: For whereas all other Estates, in Lands, and Tenements, receive their Nature, Tenure, and Denomination, [*ex dicto secundum quid*; *sive ex dicto relative*; *sive particulariter*; *viz.*] according to the
Terms,

Terms, and Limitations, to which they were originally subjected at and from the Time of their first Creation, and Commencement; as *Fee Tail*, &c. (g); an Estate in *Fee Simple* is not bounded, or circumscribed, by any Words of Limitation; or by any such negative, or derogatory Clauses; as may, in any wise, alter or affect it; either in *Quantity* or *Quality*. But whoever is *Tenant in Fee Simple*, hath the absolute Right, and full and intire *Pro-*

(g) *Fee Tail*, indeed, (according to the *Etymon*, and Origin, of the Word,) signifying no more than a less *FEE cantond*, and cut out, from a greater and larger *Fee*; as a Piece of Cloth may be cut off, and separated from the *Web*; in and with which it was before united, individuated, and containd. But however, it must be confess'd that this *Emblem*, or *Allegory*, does not hold in all Respects; because whenever the *Fee Tail*, or other smaller Estate, is spent, or exhausted; the *FEE* out of which such smaller Estates were originally created, and desumed, becomes completely, and intirely, *redintegrate*; and becomes as ample, and beneficial, and unrestraind; as it was before the Creation, and Commencement, of such particular Estates. See *Littl.* 18th Section; and *Co. Litt.* 13th Sect. and second Chap.

priety,

priety, of Lands and Tenements; or the *Allhood* [or ALLODIUM] of them; so far lodged and vested in him, or her; as that upon his or her Death who is thus *seisd*, without making any antecedent Disposition, by Deed, or Testament, in Writing; (which every such Person hath the Power to do (*b*);) the Inheritance will descend *in infinitum*; and will go, *in perpetual Succession*, by the sole and *unassisted* Act and Operation of the Law, to such of his or her Descendants; or other Relatives; as, in a *legal* Computation, have a preferable Worthiness, and *prior* Right, of Blood, to all others: In what this *prior* Right, or preferable *legal* Worthiness, of Blood, consists; and what is the constant and regular Course, and Order, of Succession, to Lands, and Tenements in Fee Simple, is the *Subject* of these Papers to unfold and explain.

(*b*) See 32 *Hen.* 8. first Chap. and 34 *Hen.* 8. fifth Chap. and 3 *Rep.* 30. and *Littl.* first and eleventh Sections.

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The FOURTH CHAPTER

Shews the Estate that vests in every Purchafor; and defines what is meant by the Word---Heir.

THE PURCHASOR, *in Fee*, is not only actually seisd, *in Fee*, of all the Lands, and Haereditaments; of which the Subject-matter of his Purchase consists; immediately upon the Execution, or Consummation of the Grant, or Contract; but so is, likewise, *every other Person*; upon whom Lands, or Tenements, in *Fee Simple*, descend, or devolve, in due Course of Law; or in Right of Succession; (upon the Death of the *Purchafor*; or upon the Death of any other Person who was, at the Time of his or her Death, lawfully seisd, of the Inheritance;) after actual Entry;

try; and Possession; or *Seisin*; once had, and obtained, by the *Heir* (i).

THE Person, or Persons, upon whom the Law casts the Inheritance; upon the Death of his, her, or their *Ancestor*; (that is to say; upon the Death of the Person from whom such Person, or Persons, immediately, inherit;) is calld *Heir*; and the Person from whom the Inheritance is *ultimately* and immediately desumed and derived (to borrow a Phrase from the Schools)

(i) See *Littl.* 8th Sect. and *Co. Litt.* fo. 15. b. for what amounts to an actual Entry, or *Seisin*. And note, That where the Possession is in no Man; but where the Freehold *in Law*, is in the Heir that entred; there the general Entry into Part of the Inheritance, in the Name of the Whole; reduceth the Whole (although the Lands lie in different Counties; and are held and *claimed* by different Titles; *quaere tamen*;) into the actual Possession of such Heir. And I conceive, further, that, in all Cases, where the Heir exercises any Act of Dominion over the Inheritance; (*viz.* such as repairing Houses, Fences, Ditches, &c; or as receiving Rents, &c;) that any single Act of this Kind will amount to an Entry: See 1 *Leon.* 265. and *Co. Litt.* fo. 15.

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may not improperly be call'd *proximus Terminus à quo*; as the *Heir* may, very suitably, and properly, be call'd *proximus Terminus ad quem*; viz. the Person or Persons with whom the Inheritance *centers*; and to and upon whom it devolves, and resorts, upon the Death of the Person seisd (k).

THE following *Rules*, with the several Exemplifications annexed; or which may be found dispers'd in the Sequel and Progress of this Discourse; will, in our Opinion, set the *whole Doctrine*, with relation to *Descents*, in a full and clear Light. But before I procede to lay down the Rules, or to give the History of the Course and Order of the Succession; it will be necessary to apprise the Reader that where I have introduced and used the Name [JOHN KIRBY (l);] in the ensuing Discourse; he is to be considerd, merely, as *Persona Dra-*

(k) *Dicitur Haeres qui est ex legitimis & justis Nuptiis procreatus; & qui fit Herus Haereditatis; vel cui Haereditas haeret; per & post Mortem Antecessoris; Proximitate, Dignitate, & Jure Sanguinis.*

(l) See SINESIUS GRANDIO; in *Operibus Senecae. matis*;

*mat*is; or as a mere *Proteus*; the Name standing for any Person whom the Reader will be pleas'd to place, or substitute, in his Room; and not for any single *Individual*; to whom such various and inconsistent Conditions, and Relations, of Life; as I have hereafter ascribed to him; could not, without great Impropriety, and Absurdity, be assign'd, or allotted.

The FIFTH CHAPTER

*Contains six Rules ; for the better Discovery
and Direction of the Course of the Descent.*

FIRST RULE. The Inheritance goes from every Person who dies seisd of it, to the eldest Son of such Person, *solely* ; (and exclusively of all the Brothers and Sisters of such eldest Son ;) and upon the Death of such eldest Son ; it goes to the Descendents of such eldest Son ; *in like Manner* ; indefinitely. The eldest Male, always, and in all Cases, succeeds solely to the Inheritance ; exclusively of all his Brothers and Sisters. But where there is no *Male* of that Order, or Degree, of Consanguinity, or Relation, which inherits ; (nor Descendents from any *Male* of that Order and Degree ;) then all the *Females* of

of that Order, or Degree, of Relation which inherits, always, succede to the Inheritance; as *Parcenors*, in equal Shares; and Proportions; and make, but *one Heir*: For Instance; where any Person seisd dies without leaving a Son; or any Descendent from any Son; then all the Daughters succede to the Inheritance. And if there happens to be but one Daughter; then that Daughter is *sole Heir*.

WHERE the Person seisd dies without Issue; and without leaving any Brother; or any Descendent from any Brother; all the Sisters of the whole Blood succede in that Case to the Inheritance.

BUT although all the Sisters of *the whole Blood* only inherit; where the *Females*, who inherit, are the *Sisters*, or the *collateral Ancestors* of the Person last seisd; yet all the Daughters by different Femmes succede to the Inheritance of which their Father was either seisd in his own Right; or to which their Father would have been Heir;

had he survived the Person last seisd. And the Daughters *by several Husbands* succede, in the same Manner, to the Inheritance of their Mother.

AND *note*, That a Son born of a subsequent Marriage, is always preferd to the Daughters by a precedent Marriage; in the Succession to the Inheritance; and that where there happens to be but one Female of that Order, and Degree, of Relation, which inherits; such Female is *sole Heir*.

SECOND RULE. Where a Descendent, or other *Relative*, of any Person seisd, would have been Heir to the Person seised, if such Descendent, or such other Relative, had survived the Person seisd; the Descendent (of such deceased Descendent, or of such other deceased Relative,) who is the Heir of such deceased Descendent, or of such other deceased Relative, who would have been Heir; always, succeeds to the Inheritance; upon the Death of the Person seisd; in the same Manner;

as

as if such deceased Descendent, or such other deceased Relative, had died actually seisd of the Inheritance. The lineal Heir of such deceased Heir apparent, or of such other deceased Person who might have been Heir; had such deceased Person survived the Person seisd; being considerd with relation to the Descent and Devolution of the Inheritance upon such lineal Heir; always, and in all Respects, *quasi alter idem*; with such deceased Heir apparent; or with such deceased Person who might have been Heir; had he or she survived the Person seisd.

It may not be amiss to subjoin an Example or two, in this Place, for the better evincing and elucidating this Doctrine; and in order to shew how the Inheritance goes, pursuant to this Rule, to the Descendents of any Person who dies seisd of the Inheritance; or to the Descendents of any deceased Person who might have been Heir to it; if such deceased Person had survived the Person seisd.

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IN this View ; let us suppose, that *John Kirby* dies seisd in Fee, leaving three Grandsons and a Grandaughter by his eldest Daughter ; and three Grandaughters by his youngest Daughter (his two Daughters, his only Children, dying in his Lifetime ;) his eldest Grandson, by his eldest Daughter, shall have Half the Inheritance ; and all his Grandaughters by his youngest Daughter, shall have the other Half the Inheritance. And the two younger Grandsons and Grandaughter by his eldest Daughter, shall have no Share in it ; the eldest Grandson by his eldest Daughter, inheriting in the Right of his Mother ; and his three Grandaughters by his youngest Daughter, inheriting in the Right of their Mother. And *note*, The Course of the Succession would have been the very same ; if the two Daughters of *John Kirby* had been by different *Femes*.

WHERE *John Kirby* is seisd in Fee ; and his eldest Son dies before him ; leaving only Daughters ; and afterwards *John Kirby* dies
leaving

leaving several Sons ; all the Grandaughters of *John Kirby*, by his eldest Son, succede to the Inheritance of *John Kirby* ; (pursuant to this, and the former Rule ;) exclusively of all the other Sons of *John Kirby* ; in Right of Representation ; and as Heir of the eldest Son of *John Kirby* ; which eldest Son of *John Kirby* was their Father ; and would have been the Heir of *John Kirby* ; had such eldest Son been living at the Death of *John Kirby*, his Father.

THIRD RULE. This Kalendar may be further extended ; (as often as Occasion requires ; even, indefinitely ;) by adding and superinducing Cells, or Classes, in the *ancestral* Line of each Column. And as long as any Relative of the Person last seisd who is of the Blood of the Purchafor, is subsisting *in the first Column* ; no Person in the third Column can inherit ; the Law supposing all *such* Persons in the first Column who are of the Blood of the Purchafor, and the Descendents of such Persons, to have a preferable Worthiness of

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Blood; with regard to their being of the *Paternal* Line.

FOURTH RULE. No lineal Ancestor can be the *proximate* or *immediate* Heir of the Purchafor; or of any Person last seisd. But yet the lineal Ancestor may inherit through a Course of intermediate Descents; *viz.* where the lineal Ancestor, in the Course and Devolution of the Descent, of the Inheritance, upon the legal Heirs; becomes the *collateral Relative* of the whole Blood; of the Person seisd: And then, and whenever, and as often as this happens to be the Case; the Children and Descendents of such former lineal Ancestor by a different Marriage, become inheritable; *viz.* where the Inheritance vests in any Class of the first Column; then the lineal Male Ancestor of any Person formerly seisd of the Inheritance, in a legal and regular Course of Succession, who is Brother of the whole Blood, (or other collateral Relative of the whole Blood) to the Person who is now seisd; becomes immediately inheritable; and consequently the Children
and

and Descendents of such *former* lineal Male Ancestor, as collateral Relatives of the whole Blood to the Person who is now seisd, become immediately inheritable; even though they are only Relatives of the *Half-Blood* to the Purchaser; or to Persons who have been remotely, or intermediately, or formerly, seisd of the Inheritance.

AND, in like manner, where any of the Relatives who are containd, or stationd, in any Cell, or Class, of the third Column; succede to the Inheritance; the lineal Female Ancestor of the Purchaser who is stationd in the exactly parallel ascending Class; becomes immediately inheritable; after the actual Entry and Seisin of any Relative who is stationd in the directly opposite Class of the third Column; and not otherwise; and then consequently the Descendents of such lineal Female Ancestor by a different Marriage; become inheritable; although only of the *Half-Blood* to the Purchaser; as being the collateral Relatives of the whole Blood to the Person who is now seisd: And therefore note,

That where I say, that any Cell, or Class in the first Column, becomes extinct *before Entry*; it is not to be inferd from thence, that the lineal *Male* Ancestor in the *ascending* Class that is parallel to it, in the second Column, is likewise extinct; but where it is said, any Cell or Class in the first Column, becomes extinct *after Entry*; then the lineal *Male* Ancestor in the parallel *ascending* Cell or Class, is always to be supposed to be extinct. This Remark is applicable to the third Column: When I say, any Cell or Class in it, becomes extinct, before, or after Entry: If before Entry; then the *Feme* in the parallel *ascending* Class, is not supposed to be extinct; but if after Entry, she is always supposed to be extinct: This Distinction is the more important; because not only the Father and Mother, but any other lineal Ancestor may have Issue which are born and descended from different Marriages.

AND note, That where there are none but Females in that Cell or Class of the third Column; upon which the Inheritance devolves;

devolves; the lineal Female Ancestor of the Person last seisd, is not intitled to the *Coparcenary*; although Sister of the whole Blood to the Cell or Class which inherits.

FIFTH RULE. All Persons who inherit, must be Relatives of the *whole Blood* to the Persons from whom they proximately and immediately inherit; *viz.* to the Person last seisd; (whether the Person last seisd of the Inheritance, was Purchasor; or other *Ancestor* that derived Title; either mediately or immediately from the Purchasor.) But where the Persons who inherit, accede to the Inheritance; or derive Title to it; in virtue of remote and intermediate Descents; from the Purchasor; it will suffice, in that Case, if they are only Relatives of the *Half-Blood* to the Purchasor; or to such other remote and intermediate *Ancestors* who were formerly, and *intermediately*, seisd of the Inheritance; in a Course of Descent and Devolution from the Purchasor; provided they are the *worthiest legal Relatives* of the whole Blood to the Person

son last seisd; and are moreover, and inclusively, of the Blood and Consanguinity of the Purchafor; by which means; (that is to say, in consequence of the last mentiond Distinction;) it, *very frequently*, happens that the Person upon whom the Inheritance devolves, in a regular and legal Course of Succession, is not *Heir*; or next of Kin; to the Person last seisd of it; either in the *Paternal* nor *Maternal* Lines (*m*).

AND

(*m*) If Judge *Littleton*, in the sixth Section of his *Tenures*; or Lord Chief Justice *Coke*, in his Commentary upon that Section; (fo. 11. b.) seem to lay down a different Doctrine; we shall be able to shew, in the Sequel, that the Doctrine they have laid down; is erroneous and inconclusive; and the Effect of Inadvertency and Inaccuracy; in these two venerable *Reporters*. And, indeed, *Littleton* produces an Exemple; in the *fourth* Section; which clearly confirms our Opinion; and palpably, and absolutely, contradicts and overthrows what both he and Lord Chief Justice *Coke* have afterwards laid down; *touching the Necessity of the Person who inherits, being always Heir; or the worthiest and nearest Relative; to the Person last seisd*; which Allegation we conceive, is no further, or otherwise, true; than what comes authorized and warranted by the fifth Rule; to which this Annotation, or *Animad-*
version,



AND it likewise very often happens; with regard to those Relatives who are containd and stationd in the respective Classes of the *third Column*; (and with regard to the Relatives of the respective *Femes*; which Femes are placed in the *ascending Scale* of the second Column;) that where any of these Relatives would have been Heir to the Person seisd; had they survived the Person seisd; yet the collateral Ancestor of those Relatives, although such collateral Ancestor is the immediate Heir of *those Relatives* who would have been Heir to the Person seisd; had they survived the Person seisd; for all that; does not succede to the Inheritance; upon

version, is annexd; and subjoind; viz. that the Person, or Persons, who inherit; and upon whom the Law casts the Inheritance; upon the Death of the Person seisd; must always be the worthiest and nearest of *such* of these Relatives of the whole Blood; of the Person last seisd; as are of the Blood, and Consanguinity of the Purchasor; and such as are not incapacitated; or excepted to; by the fourth Rule.

the Death of the Person seisd; without Issue. But this will be made best appear by *Exemple*.

WHERE *John Kirby*, for Instance, purchases Lands, and dies without leaving Issue; his Brothers and Sisters in the central Class, and all the Classes of the first Column, being likewise exhausted and extinct, at his Death; the Inheritance will go, under this Contingency, and in this Case, to the Relatives of *John Kirby* who are comprized in the second Class of the third Column. But if his Relatives in the second Class of the third Column, be likewise extinct; at his Death; A. of that Class (although the next collateral Heir of that Class;) shall not be considered; with relation to their Right of succeeding to the Inheritance of *John Kirby*; but according to their Degree of Proximity and Worthiness of Blood to *John Kirby*; and must make Claim from him; as being the Person who was last seisd of the Inheritance; and cannot make Claim from any *extinct* Relative in the second Class of the third Column;

Column; although such *extinct* Relatives would have been Heir to *John Kirby*; if any of them had survived him; or if any Descendent from any of them had been subsisting; at the Death of *John Kirby*.

THE SIXTH RULE. The Inheritance is always derived, and transmitted, from all such *Personages*, and *Relatives*, respectively; as are stationd, and included, within the Kalendar; where the *Purchasor* is placed in the *central Class*; as often as *any of them* become seisd of it; as well as from all the other *collateral* and *lineal Ancestors* of the *Purchasor* who become actually seisd of the Inheritance; as if *all of them* had been, respectively, and actually, *Purchasors* of the Inheritance (*n*). But the Inheritance will never devolve or descend upon any Person (nor upon any of

(*n*) Although the Kalendar is capable of being indefinitely extended; in the *ancestral* Line of each Column; yet the Remark will hold good in all Cases. See the third Rule; fo. 41, for extending the Kalendar; in the *ancestral* Line.

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the *Consanguinei* or Relatives of such Person; *quatenus* such Relatives;) with whom the *Purchasor*, or any Person upon whom the Inheritance devolves, or is transmitted, in a Course of Succession, from the *Purchasor*, intermarries; unless where the *Purchasor* is born, and descended, from such Marriages. But the Inheritance *procedes*, and is derived, *in every other Respect*; upon the Death of every Person who becomes seisd of it; as if the Person who died last seisd of it, had been the *Purchasor*. But, however, in consequence of the foregoing Remark, where a *Female* is the *Purchasor*; or where there is a Devolution of the Inheritance upon a *Female Heir*; and a Son, or the Daughters of such Female Purchasor, or of such Female Heir, *succede* to the Inheritance upon the Death of their Mother; and, after Entry, die without Issue. And where it is a Son, if the Brothers and Sisters, of the whole Blood, of such Son, are likewise extinct; (or whenever and as soon as there happens to be a Failure of Issue to such Son, or Daughters; and where it is a Son of such Female Purchasor, or

of such Female Heir, that *succedes* to the Inheritance; where his Brothers and Sisters of the whole Blood are likewise extinct) then the Inheritance *centers* among the collateral Relatives of the Mother of such Son, or Daughters; whereas had the *Son* or the *Daughters* of such Female Purchasor, or of such Female Heir, purchas'd the Inheritance; it would have resorted to, and devolved upon the Line and *Consanguinei* of their Father.

WHERE any Class becomes extinct after Entry; then the Course and Order of Succession always varies according to the Degree and Relation of Consanguinity, in which that Class stood to the Purchasor and to the Person last seisd, *respectively*; in such Manner; as is described in the foregoing Rules.

HAVING premised the foregoing Particulars; and having laid down the *Rules*; we now prepare, and procede, to lay before the Reader the whole Detail, or History,

of the Course, and Order, of the Descent,
or Succession, of the Inheritance, upon
the Lineage, and Relatives, of the *Pur-*
chaser ; according to the Laws of *Eng-*
land.

The

The SIXTH CHAPTER

Gives the Detail of the Descent, &c.

LET us suppose, for the Purpose, that *John Kirby* is the *Purchasor*; the Inheritance at his Death will immediately descend, and devolve, upon his Descendants; pursuant to the *first* and *second* Rules. But where *John Kirby* happens to die without Issue; or where, or whenever, there happens to be a Failure of Issue, to *John Kirby*; the Inheritance will devolve, and descend, upon his Brothers and Sisters in the central Class; pursuant to the *first* and *second* Rules.

AND where all the Relatives in that Class, become extinct; either before, or after Entry; the Inheritance will go to A.
of

of *John Kirby*; (*viz.* to his Relatives in the first Class of the first Column.) And where A. of *John Kirby*, becomes likewise extinct before, or after Entry; the Inheritance will go to the second Cell, or Class, of the first Column; *viz.* to B. of *John Kirby*. And where B. becomes likewise extinct either before or after Entry; the Inheritance will go to C. of *John Kirby*; (*viz.* to his Relatives in the third Class of the first Column;) and where C. of *John Kirby* likewise becomes extinct; either before or after Entry; the Inheritance will, in that Case, and under that Contingency, devolve and descend upon D. of *John Kirby*. And the Inheritance will procede in this Manner; *up* the first Column; in and through the several Cells, or Classes, of that Column; according to the Order, and Series, and Proximity, of the respective Capital Letters that are included and inserted in it (o).

(o) See the third Rule; fo. 41.

AND *note*, That the Cell, or Class, in the first Column, which is nearest to the central Class, is always preferred (provided, the Relatives, who are comprized in it, have the Qualifications, and Requisites, which are demanded by the first Rule;) in their Right, and Succession, to the Inheritance; to the remoter Cells, or Classes of the first Column. But where *John Kirby* is the Purchaser; and dies without Issue; and where the central Class and all the Classes of the first Column are likewise extinct at the Death of *John Kirby*, the Inheritance will resort, under this Contingency, to the Relatives of *John Kirby* who are comprized in the second Class of the third Column (*p*). And after the

(*p*) See *Co. Lit.* 12. and *Plowd.* 444 to 449; for the Reasons why this Class is preferred, (with Reference to the Right of SUCCEEDING to the Inheritance;) both to the lowest Class of the third Column; and to the higher Classes of that Column. *Plowden* observes (*in loco citato*) that where the Inheritance devolves upon the *Cognati* of the Father upon the Failure

the Entry of any Relative in that Class; the Inheritance will devolve upon, and go, by *collateral* Descent, or Devolution, to the Grandmother of *John Kirby* in the second *ascending* Class; *where she is Heir*; and, if she is dead, the Inheritance will go, under this Contingency, and in this Case, to the Father of the Purchaser; where the Father is the *eldest*, or *only*, Son of the Mother of the Father of *John Kirby*; (*viz.* of his Grandmother in the second *ascending* Class.)

Failure of the *Agnati*; the Inheritance will go to the Relatives of the Purchaser in the second Class of the third Column; before it will go to the Relatives of the Purchaser in the lowest Class of that Column; because the *Lords* were presumed to respect the Female Blood of their former Tenants; rather than, and preferably to, the Blood of the Mother who was newly introduced into the Family of their *feudatory*, &c. And see (*in loco citato*) the Reasons why the Relatives of the Purchaser in the second Class of the third Column, are preferred to the Relatives of the Purchaser in the superior or upper Classes of that Column, &c.

AND

AND here it is worthy to be observed, that if the Inheritance was to go to and devolve (under the Occurrences and Contingencies of this Case) upon the Relatives of the Purchafor who are included in the first Class of the third Column; in Preference to the Relatives of the Purchafor who are included in the second Class of that Column; the Mother of the Purchafor would, *under such a Dispensation*, very frequently be preferred to the Father of the Purchafor; in the Succession to the Inheritance. And this, in all Probability, is the true Reason why the *Policy of the Law* hath preferred the Relatives of the Purchafor in the second Class of the third Column to the Relatives of the Purchafor in the first Class of that Column.

BUT where the Relatives of the Purchafor in the second Class of the third Column, likewise, fail; and are extinct; before Entry; the Inheritance will go, under the Circumstances and Contingencies of this Case, to the Relatives of the Purchafor

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chaſor in the third Claſs of the third Column. Here it is to be obſerved, that A. of that Grandmother who is placed in the ſecond *ascending* Claſs, does not inherit; but, that the Relatives of the Purchaſor who are placed in the third Claſs of the third Column, are preferred to A. of ſuch *Paternal* Grandmother; although A. of ſuch *Paternal* Grandmother contains the collateral Anceſtors (and the collateral Heir) of the Relatives of the Purchaſor in the ſecond Claſs of the third Column; which Relatives in the ſecond Claſs of the laſt mentiond Column; although they are extinct; yet would however have been preferred to the Inheritance; had they not been extinct; and although the Claſs which is preferred to the Inheritance (*viz.* the third Claſs in the third Column) is *aequidistant* in the Degrees of Conſanguinity; with A. of ſuch *Paternal* Grandmother. But it ſhould ſeem, that the Law aſcribes a greater Worthineſs of Blood to the Relatives of the Purchaſor who are containd in the third Claſs of the third Column; than to A. of ſuch *Paternal* Grandmother. And

what is said to constitute this preferable Worthiness of Blood, *consists in this*; that a Sister of every Class in the third Column, except the first Class in that Column, produced and brought forth *one or more* of the lineal Male Ancestors of the *Purchasor* who are placed in the *ascending Scale* of the second Column. But, however, where the third Class of the third Column fails; before Entry; the Inheritance will go, in that Case, and under that Contingency, to A. of that Grandmother who is placed in the second *ascending* Class; before it will go to the fourth Class of the third Column; because A. of the Grandmother is only at the Distance of five Degrees, from the *Purchasor*; in Point of Consanguinity; whereas the fourth Class of the third Column is at the Distance of six Degrees.

IN this Manner the Inheritance is *circumfered* and transmitted to the *third Column*; and to the collateral Ancestors; (*viz.* to A. and B. &c.) of the several Females in the ascending Classes. The Cell, or Class, which is next above the lowest

Class of the third Column, being preferd, in the Descent and Transmiffion of the Inheritance from the Purchasor; and taking it, by reason of (*legal*) Worthiness and Proximity of Blood; before the higher Classes of that Column. But yet so; as that where the nearest Class which is above the lowest Class in the third Column, which might have been Heir; had it existed, is extinct; the Class which is next above such extinct Class in that Column, is preferd to A. of such extinct Class; although such extinct Class in the third Column would have been Heir; had it been in Being; and though A. of such extinct Class, is Heir to such extinct Class; and though the Class which inherits, and which is next above such extinct Class, is *aequidistant* from the Purchasor; with A. of such extinct Class. But it should seem, that the higher Cells or Classes in the third Column which are placed above the lowest Class of that Column; and that A. &c. of such Relatives of *Purchasor*; as are placed, and stationd, in such higher Classes of the third Column, always, have the Prae-eminence; and

and are praeferd; in their Right, and Succeſſion, to the Inheritance; where they are in equal Nearneſs; in the Degrees of Conſanguinity; to the *Purchaſor*; with A. or B. or C. of ſuch Relatives of the *Purchaſor*; as are placed, and ſtationd, in any lower or ſubordinate Claſs of the third Column; which is above the loweſt Claſs of the third Column; in regard to there having been more of the Purchaſor's lineal Male Anceſtors in the *Paternal* Line; born and deſcended from the *Femes* who are placed in the higher aſcending Claſſes; than from the *Femes* who are placed, or ſtationd, in the lower aſcending Claſſes.

BUT where A. &c. of ſuch nearer Claſſes in the third Column which are placed above the loweſt Claſs in that Column; (which nearer Claſſes are extinct;) are nearer in the Degrees of Conſanguinity; to the Purchaſor; it ſhould ſeem that, in that Caſe, the collateral Anceſtors (*viz.* A. &c.) of ſuch extinct Claſſes ought always to be preferd to the higher Claſſes in the third Column; in their Right, and Succeſſion, to the Inheritance.

WHERE

WHERE the first Column, and all the Classes in the third Column above the lowest Class in that Column; and A. and B. &c. of such higher Classes in the third Column, are extinct before Entry; then, and not otherwise, the Inheritance will devolve from the Purchaser; or from any Relative of the Purchaser in the central Class; upon the Relatives of the Purchaser who are contained in the lowest Class of the third Column.

WHERE the Inheritance once devolves upon, and vests in, the first Column; or where it *descends* upon the Relatives of the *Purchaser* in any Class of the third Column; which is placed above the lowest Class of that Column; it can never go, afterwards, to the Relatives of the Purchaser in the lowest Class of that Column. And note, That where the Inheritance once vests in any particular Class in the third Column; which is above the lowest Class in that Column; it will never vest, immediately from thence, in any other Class of the third Column,

Column with relation to there being no Consanguinity between the several Classes of that Column; and *for that* none can inherit; but who make Claim to the Inheritance as the nearest and worthiest Relatives of *the whole Blood* to the Person last seisd of it; of any of those who are inclusively of the Blood of the Purchaser (q): For both these Ingredients must indispensably and necessarily concur, in his Person, to intitle and qualify him to inherit (r). It is his Accession to the Inheritance in virtue of this Maxim which denominates him *Heir*; and not always barely and solely the Relation of Consanguinity which he hath to the Person from whom he immediately, and *ultimately*, derived the Inheritance; although it often happens that the Person last seisd of the Inheritance; with respect to the Transmission, and Derivation, of it, out of him; is

(q) See *Co. Litt.* fo. 11. b: See likewise the fifth Rule; fo. 45.

(r) See fourth Rule; fo. 42; to know where and in what Cases the Relatives of the *Half-Blood*, may inherit.

to be considerd as the Root, or Stem, to many Intents ; as if he had been the Purchafor. And in many Cafes, the Courfe of the Defcent from the Perfon laft feifd, varies not in the leaft ; from what it would have been ; if the Perfon laft feifd of the Inheritance, had been the Purchafor (s).

AND yet it fometimes happens (notwithstanding) that the Perfon upon whom the Inheritance devolves, and to whom it is tranfmitted, in a legal and regular Courfe of Succeffion ; is not always the *Heir* ; or next of Kin ; to the Perfon laft feifd of it ; neither in the *Paternal* nor *Maternal* Lines. And we beg leave to obferve that the Rule or Maxim, [*Haeres in recta linea praeferatur Haeredi in linea transversali : propinquior excludit propinquum ; propinquus remotum ; & remotus remotiorem*] hath been originally defumed and taken from the *Roman Civil Law* ; and is not applicable to the Laws of *England* ; but with great Limitation, and Difinction.

(s) See the fixth Rule ; fo. 49.

BUT these Points are not only fully explained in the *fifth Rule*; but will be further proved and illustrated in the Sequel of what we have to offer; and in this View we procede to shew, that where *John Kirby* is seisd in *Fee*; and dies without leaving any Issue; and where the *central Class* is extinct at his Death; or becomes so afterwards; by the Death of all his Brothers and Sisters; without Issue; by which Accident the Inheritance vests, somewhere, in the *first*, or *third* Columns; as the Case happens; (in pursuance of the Doctrine, we have laid down;) yet if after the Death of *John Kirby*; and if even after the *actual* Entry of any Cell or Class in either of the *first* or *third* Columns; the *central Class* should be unexpectedly renewd, or revived, by the Birth of a *posthumous* Son, or Daughter, or *Nephew* or *Niece*, to *John Kirby*; such *posthumous* Child (whether Male or Female) may enter upon the Inheritance. And *note*, That where there are two or more such *posthumous* Children born after the Death of *John Kirby*; such *post-*

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humous Child or Children as are *Heir*, are well intitled to enter upon the Inheritance.

WHERE the Father of *John Kirby* is the Purchasor, and dies; and *John Kirby*, who was his eldest Son, dies *after Entry*; if the Relatives of *John Kirby* who are comprized in the central Class, are totally extinct at the Death of *John Kirby*; (or become so afterwards;) and if the first Column is likewise extinct at the Death of *John Kirby*; the Inheritance will devolve upon the Relatives of *John Kirby* in the second Class of the third Column; (although of the *Maternal* Line of the Father of *John Kirby* who was the Purchasor;) in the same manner; as if *John Kirby* had purchas'd it; because the second Class in the third Column (under the Circumstances and Occurrences of this Case,) contains the Heir and the worthiest and nearest Relative of the Person last seisd who is also and inclusively of the Blood and Consanguinity of the Purchasor. But if the Father of *John Kirby* had survived *John Kirby*; and had died

died seisd; the Inheritance would have gone, under the Circumstances and Contingencies of this Case, to the Relatives of *John Kirby* in the third Class of the third Column: From whence it appears that---
Seisina facit stipitem; & primum gradum.

WHERE the Inheritance descends upon *John Kirby* from his Grandfather's Grandfather in the fourth *ascending* Class who was the Purchaser; and *John Kirby* dies after Entry; without leaving Issue; and where the Relatives of *John Kirby* in the central Class, and all the Classes of the first Column, are extinct at his Death; the Inheritance will go to the fifth Class of the third Column (although of the *Maternal* Line of the *Purchaser*;) and will not go, under the Circumstances and Occurrences of this Case, to the sixth Class in the third Column; although that Class contains the Brothers and Sisters of the *Mother* of the Father of the Purchaser; (and consequently contains the Heir of the Purchaser;) upon the foregoing Distinction; that whoever

Claim to it; *as the nearest and worthiest Relative of the whole Blood to the Person who was last seisd of it*; and must be also and inclusively of the Blood, or Consanguinity, of the Purchaser (t).

AND *note*, That, under the Circumstances and Occurrences of this Case, none of the Cells, or Classes, in the third Column, which are placed below the fifth Class in that Column, are of the Blood, or Consanguinity, of the Purchaser.

WHERE the Inheritance devolves, in virtue of intermediate Descents, upon *John Kirby* from his Great Grandfather in the third *ascending* Class, who was Purchaser; and *John Kirby* dies after Entry, the central Class being extinguishd by his Death; and the first Column being extinct likewise at his Death; the Inheritance will, under the Circumstances and Occurrences of this Case, go to the fourth Class in the third Column; (and not to the fifth Class of

(t) See the fifth Rule; fo. 45.

that

that Column ;) under the Distinctions, and for the Reasons, before mentiond.

WHERE Lands descend upon *John Kirby* from his Grandfather's Grandmother in the fourth *ascending* Class; who was the Purchasor; and *John Kirby* enters and dies; the central Class being extinct *by his Death*; or where it becomes so afterwards; the Inheritance will descend upon A. of *John Kirby*; and where A. becomes extinct either before or after Entry; it will go to B. of *John Kirby*; and where B. becomes extinct before or after Entry; it will go to C. of *John Kirby*; (all those Classes respectively being Heirs *seriatim* to *John Kirby* on the Part of his Grandfather's Grandmother in the fourth ascending Class; and Descendents from her.) But the Inheritance will never go to D. of *John Kirby*; in regard to that Class; its, not being of the Blood or Consanguinity of the Purchasor. But where the Descendents of *John Kirby*, and the *central* Class and A. and B. and C. of *John Kirby* are extinct at his Death, the Inheritance will go,
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under this Contingency, to the *fourth Class* in the *third Column*. (And where that Class is extinct, it will go to A. B. &c. of the Relatives of *John Kirby* who are comprized in the fourth Class of the third Column; as if such fourth Class had purchased the Inheritance.) So likewise where Lands descend from the Grandmother of *John Kirby* in the second *ascending* Class; and *John Kirby* dies after Entry; and the central Class becomes extinct by the Death of *John Kirby*; or where the central Class survives him; but becomes extinct afterwards; the Inheritance will go to A. of *John Kirby*. But if A. becomes extinct either before or after Entry; the Inheritance will never go to B. of *John Kirby* for the Reasons already given. But it will go to the Relatives of *John Kirby* in the second Class of the third Column, &c.

WHERE the Father of *John Kirby* purchases the Inheritance, and dies; whereupon the Inheritance devolves upon *John Kirby*, as Heir to his Father; and *John Kirby* dies after Entry; and where the

central Class either is extinct by his Death; or becomes so afterwards; and where all the Relatives of *John Kirby* in the first Column, are extinct before Entry; the Inheritance will devolve upon the Relatives of *John Kirby* in the second Class of the third Column; in the same manner; as if *John Kirby* had been the Purchaser. But if the Father of *John Kirby* had survived *John Kirby*; and had died seised of the Inheritance; the Inheritance would have devolved upon the Relatives of *John Kirby* in the third Class of the third Column.

WHERE the Father of *John Kirby* who is the Purchaser; or otherwise seised in Fee; is twice married; and dies leaving *John Kirby* his only Son and an only Daughter by the first Marriage; and likewise leaving an only Son by the second Marriage. And *John Kirby* dies after Entry; without Issue; the Inheritance will go, under this Contingency, to the Sister of *John Kirby* (who is his Relative of the whole Blood); pursuant to the Maxim---*Possessio Fratris de Feodo simplici, facit Sororem esse Haeredom.*
And

And the Inheritance will sooner *escheat*; than it will go to the Brother of *John Kirby* by the second *Venter*; as such Brother, by the second Marriage, is only the *uterine* Relative of *John Kirby*; and consequently cannot inherit; under the Circumstances of this Case. And yet if *John Kirby* had died before his Father; the *uterine* Brother of *John Kirby*, under that Contingency, would have been Heir to his Father; and would have excluded, and have been preferred to the Sister of *John Kirby*, of the whole Blood.

WHERE *John Kirby* is the Purchaser; and dies; and the Relatives of *John Kirby* in the central Class, are extinct at his Death; or become so afterwards; and where all the Relatives of *John Kirby* in the first Column, are likewise extinct before Entry; the Inheritance, under that Contingency, will go to the Relatives of *John Kirby* in the second Class of the third Column; as hath been before observed. But where there are none, but Males; or but, only, one Female in that Class; at the
Time

Time of the Devolution of the Inheritance upon that Class; if after the Entry of any of the Males, or of the Female, in that Class; that Class should become extinct; saving only the Grandmother of *John Kirby* in the second ascending Class, survives; in that Case, the Inheritance will go to her. And where she is dead, the Inheritance will devolve upon the Father of *John Kirby*, from thence; and upon the Entry and Death of the Father of *John Kirby*, without Issue who survive him, the Inheritance will go, under the Circumstances and Contingencies of this Case, to the Relatives of *John Kirby* in the third Class of the third Column.

WHERE Lands descend upon *John Kirby* from his Mother who was the Purchaser; or who died seised in *Fee*; if *John Kirby* dies after Entry; and the Relatives of *John Kirby* in the central Class, are extinct at his Death; or become so; afterwards; the Inheritance will go to the Relatives of *John Kirby* in the first Class of the third Column; and will never go to the Relatives

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of *John Kirby* in any Class of the first Column; in regard to their want of Consanguinity to the Purchaser.

WE now conceive, that what hath been here offerd to the Consideration of the Reader, may suffice to shew how Lands in *Fee Simple* descend upon the Death of the *Purchaser*, or upon the Death of any Person who becomes seisd of the Inheritance, through all the Variety of Accidents, or Contingencies, which can possibly attend the Inheritance; or happen to it, in it's Descent or Transmission upon the Family or Relatives of the *Purchaser*: For although the Inheritance will never *escheat*; so long as there is any Descendent, or collateral Relative, of the Person last seisd of it; *provided*, such collateral Relative is *of the whole Blood*, of the Person last seisd of it; and is also of the Blood and Consanguinity of the Purchaser (*u*); yet as the Rules, of themselves, will, as we hope, afford a sufficient Light, and Direction, in

(*u*) See fifth Rule; fo. 45.

most Cases ; we think it would be but to detract from their Authority, and Usefulness, to insist any further, or longer, on these Matters.

WE proposed, at our first setting out, to comprehend within *this Essay* ; little more than a *Commentary* upon PLOWDEN ; in the Case, *Clare and Brooke*, alias *Cobham* ; which is reported by him. And we have been so just to that Intention ; as not only to have explained all the difficult and obscure Passages of that Author ; but we have likewise, in our Opinion, given the Reader a full and clear Prospect of the whole Orb, or Circuit ; wherein Inheritances are destined, by the *Polity of our Laws*, to move and fluctuate. And thus the Law hath stood in all the Particulars, I have related, above five hundred Years, without the least Variation.

The SEVENTH CHAPTER

Shews that a Devise of Lands in Fee, to the Heir at Law, is void; and that the Heir will take by Descent; and not by the Devise. But where the Devise is to such Females as are Coheirs; the Devise stands good; because by the Devise they take as Jointenants; whereas they would take as Parcenors by the Descent; treats of Jointenants; and of the Right of Survivorship among Jointenants; how the Joint-tenure is severed; and where they become Tenants in Common. In what Cases the Husband is Tenant by the Curtesy; treats of Dower; and at what Age, and in what Cases, the Wife is dowable; shews where the Cognizor of a Fine, takes as an original Purchasor; and how every Person who becomes seisd of Lands in Fee
Simple,

Simple, *may take as Purchasor; by Alienation, and Repurchase.*

WE now procede to observe that a *Devise* of Lands in *Fee* to any single Person who happens to be the *sole Heir* of the *Devisor*; (even although such single Person is nominally described; and properly and personally identified; in the *Devise*;) is void; and such sole Heir, or single Person (whether Son, Brother, Uncle, Cousen, Daughter, Sister, &c;) shall take by *Descent*; and not by the *Devise*. But where two or more Females are *Heir*, (whether such Females are Daughters, Sisters, Aunts, &c.) a *Devise* to them, (under a proper Denomination, and Designation of their Persons,) is good; because such *Devise* alters the Disposition of the Law; for as much as *Females* who are *Heir*, take as *Parcenors*; whereas they take by the *Devise*; as *Jointenants*. But even with relation to *Females* (who are Coheirs;) there must be an apt and proper Designation of their Persons; or otherwise the *Devise* cannot stand. For a *Conveyance*, or *Devise*, of
Lands

Lands *in Fee*, to the Heir of the *Grantor*, or *Devisor*, under that Denomination only ; without well and sufficiently defining and describing the Person, or Persons, is void, in all Cases ; because none can raise a *Fee Simple* to his own right Heirs ; by the Name of *Heirs* ; as a *Purchase* ; neither by direct Conveyance ; nor by Use ; nor by Devise.

WHERE there are *Jointenants*, the Survivors, or Survivor, take the Inheritance ; (unless where there is an Agreement, in Writing, to prevent the Effect of such Survivorship ;) even where the *Person* or *Persons* dying leave *Issue*, or *Femes*, or both.

WHERE there are two *Jointenants* ; and one of them aliens ; this amounts to a Severance of the Jointure ; and the Jointenant who did not alien, holds as Tenant in Common with the *Alienee*, or *Vendee*, of the Lands. But where there are more than two Jointenants, the Jointenancy still subsists among the Jointenants who did not alien.

THE

THE *Husband*, where he hath Issue by his Wife, (Male, or Female,) born alive, if he survives his Wife, shall enjoy the Inheritance of his Wife, by the *Curtesy* of *England*, during his Life; whether the Child lives or dies. The *Husband* gaineth, immediately, by the Intermarriage, an Estate of *Freehold*, in the Right of his Wife, of all such Lands of which she was, at the Time of such Intermarriage, actually, seisd. But where Lands descend upon the Wife, after Marriage, there must be an actual Entry, and Seisin, in the Husband, during the Coverture, to intitle him to be *Tenant by the Curtesy*.

A WOMAN is *dowable*, upon the Death of her Husband, of all such Lands, (excepting, only, where the Husband is *jointly* seisd; as aforesaid;) of which her Husband was seisd in Fee; either in *Fact* or in *Law*; at any Time during the Coverture; whether she hath Issue by her Husband, or not, if she is above the Age of nine Years at his Decease; (and not otherwise;)

to

to hold a *third Part* to herself, in Severalty, by Metes, and Bounds, during her natural Life.

WHERE the Uses declared upon any Fine, vest the Inheritance in the *Cognisor* of such Fine; the *Cognisor* takes, in that Case, as an *original Purchasor*. And, in all Cases, where the Person upon whom the Inheritance descends, as *Heir*, *aliens*; and then *repurchases* it; such Person is then to be considered as an original Purchasor, in all Respects.

IN some Places within this Realm; by particular Custom, and Usage immemorial; Lands descend *to all the Sons*; and, in some other Places, *to the youngest Son, only*; the first of these Customs is calld *Gavelkind*; the other is calld *Borough English*. But of these we do not propose to treat.

The

The EIGHTH CHAPTER

Contains some useful and critical Remarks, upon this System; (as it is exhibited and laid down in the praecedent Chapters;) and likewise contains the Conclusion; wherein some Emendations and Alterations are proposed to be introduced into this System.

MANY curious Reasons, and learned Arguments, have been alleged and advanced by the Writers and Reporters of the *Feudal Law*, in Defense of the most exceptionable Parts of *this System*; from the Consideration of the *Nature and Object* of the *old feudal Tenures*; viz. so far forth; as this System is intended to maintain and conserve *Unity of Possession*; by giving the Inheritance to the *eldest Male*; solely; and exclusively of his Brothers and Sisters;

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upon

upon a supposed Right of Primogeniture; as also with relation to it's placing the lineal Ancestors, or *Ascendents*, of both Sexes, in so very remote and distant a Possibility of succeeding to the Inheritance; or of acquiring it; in a Course of haereditary Succession; and likewise with relation to it's praefering the remotest Classes in the first Column of the Kalendar; (or the remotest *Agnati*) to the nearest Classes in the third Column of the Kalendar; (or the nearest *Cognati*;) &c; &c. We have laid down some of the principal Arguments that have been offerd in Defense and Maintenance of these Points; (though briefly and summarily;) in a former Edition; which we gave of this Treatise; many Years ago (*w*). But as these very Points seem to have taken place, and to have obtaind, in direct and open Violation of the Rights of Consanguinity; and not to be in any sort consistent, or compatible, with those Rights, or Degrees; we have, for that very Reason,

(*w*) This Discourse was first publishd in *August*, One thousand, seven hundred, and thirty six.

omitted

omitted to insert those Reasonings, and Arguments; in this present Edition of this Treatise; as judging, and concluding, that the Degrees of Consanguinity (as above set forth) are the truest, and fittest, if not the only Test, or Touchstone; by which the Wisdom and Justice of all *political Constitutions*, respecting the Subject-matter of this Treatise, ought to be tried, and determined; and as disregarding and disdaining all Embellishments, and rhetorical Flourishes, or artful Exaggerations, (however specious, or plausible, or subtle they may, peradventure, be thought to be,) which are not directly conducive, or strictly conclusive, to evince and prove the Issue of the *Argument*. Besides; we do not so much affect, or incline, to *pay the Tribute* of Praise; or to *play the Rhetorician*; in drawing up a formal and artificial *Laudative* of this Branch of Learning; as to enter into a solid and serious Discussion, and Disquisition, upon this Subject; and to descend to such *Universalities* of Reasoning; with relation to it; (if the Learning and Abilities of the Author should happily

be supposed to render him equal to the *arduous Task*;) by which the Question can only be truly, and rightly, determin'd ---how far this System is more or less defective; in its Decision; (through all the several Contingencies we have laid down;) concerning the Right of Succession; to Lands in Fee; and in determining OF the *Propriety*; which vests immediately upon the Death of every Person who is lawfully seisd of the Inheritance; in some of the Relatives, or Kindred, of such deceased Person; in such Order; and Method; as we have praemised. And I think it will abundantly appear from what I have further to offer; that this System deviates, in many important Respects, from natural Equity; and is, in many Instances, as much the *Creature*, and mere Fiction, of *Chivalry*; as the *Phaenixes*; and *Gryphins*; and *Unicorns*; with which the *Heralds* have adorn'd and embellish'd the Arms of our Nobility, and Gentry; which it is very well known, never had any real Existence, *in Nature*; but are merely *emblematical* Figures, and *Devices*; which have been invented and contrived

contrived at *Pleasure*; and have been introduced solely, and purposely, for the sake of Ornament and *Illustration*. And indeed, even just so; it seems to have fared with *this System*; which is extremely well calculated to exhibit and display the Pomp; and Grandeur; and Glory; and Splendor of the World; and to indulge and gratify the Vanity and Ostentation of *Heralds*. It seems likewise to be a proper Course, and effectual Means, of *embalming* and delivering down to Posterity (and of *consecrating to Perpetuity*) the Memory of worthy Actions; and of famous Exploits and *heroical* Atchievements; but does not however (or *for all that*;) fully co-incide, or intirely consist, or correspond with, the Rules and Maxims of a *true political Justice*; which is, and always ought to be, founded in the inviolable Observation of the *Law of Nature*; that *most sacred and infallible* Guide of all our Actions.

Now upon a Supposition, (and upon the following Concession; which I think, cannot fairly, or reasonably, be denied;) that

that the Rights of Consanguinity should always be preserved inviolably ; in all political Constitutions, respecting the Subject-matter of this Treatise ; and which relate to the Administration or Distribution of the Estates, and Effects, and Rights of all Persons dying *intestate* ; and also, upon this further Admission ; and Concession ; (which I likewise think, cannot fairly, or reasonably, be denied ; or contradicted ;) that the Rights of Consanguinity, always, absolutely, and necessarily, arise from and intirely depend upon Worthiness of Blood ; and the Nearness of the Degree of Consanguinity ; (which indeed creates and constitutes this Worthiness of Blood ;) it will be difficult to account for, or to solve, why the Father who is only at the Distance of *one Degree*, from the Purchaser ; (and his Father, too ;) should be postponed ; and why the Relatives in A. who are at the Distance of three Degrees ; should be preferred to the Father ; in their Claim and Pretensions upon the Succession ; or why the Relatives in the remoter Classes of

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the

the first Column ; [or the remote *Agnati*] are praeferd in their Claim and Succession to the Inheritance ; to the nearer Classes of the third Column ; [or to the near *Cognati* ;] or why the Relatives who are comprized and stationd in the second Class of the third Column (though remoter by one Degree ;) should be praeferd to the Relatives in the first Class of that Column ; as the Relation of both these last mentiond Classes to the Purchasor, is only *per Matricem* (x) ; the Relatives who are containd in the second Class of the third Column, being of Kin to the Purchasor's Father ; and the Relatives who are containd in the

(x) This derogatory and disparaging Distinction [of being a Relative *per Matricem* ;] is a vain and frivolous Distinction ; and hath no solid Ground, or Foundation ; either in Reason ; or in *Nature* ; but is merely a Distinction of *Chivalry* ; (as we have satisfactorily, and abundantly, proved in a former Edition of this Work :) For *natural Equity* makes no Distinction between the *Paternal* and *Maternal* Lineage ; in aestimating, or calculating, the Rights of Consanguinity.

first

first Class of that Column, being of Kin to the Purchaser; by their respective Mothers; (*viz. per Matricem*;) and more especially; as the second Class of the third Column, is said to take place of, and to be preferred to the third Class of the third Column; and as the last mentioned Class is said to take place of the fourth Class in the third Column, &c, &c; *ratione Proximitatis*. It likewise seems not to be in the least co-incident, or consistent, with that universal Equity, Expediency, or *Propriety*, that should never fail to accompany and adorn the *public Acts* of a wise and civilized and polite and learned People; (but seems to be a very gross and unwarranted Deviation from the *Law of Nature*; and from the Rights and *Rules* of Consanguinity; therein founded; and from thence derived;) for *this System* to recognize, or allow (in the manner it does;) of, the Pretention, or Claim, of *Primogeniture*; indiscriminately; and in all Cases; without due Distinction; and likewise with relation to its placing the Ascendents, or lineal Ancestors; (both Male and Female;) as well

as the *Inhabitants* (or Relatives) in the third Column; in so very remote and distant a Possibility of taking, or succeeding to, the Inheritance.

AND, certainly, if a due Regard was had to the Rights and Claim of Consanguinity; *that Constitution* whereby the eldest *Male* is preferred to Lands of Inheritance; (solely and exclusively of all his Brothers; and Sisters;) is (if considered abstractedly; and independently of other Motives; and Considerations;) evidently repugnant to all the Rules of natural Equity; in the highest Degree: The *Parent* being obliged, by the Law of Nature, to use, and employ, and extend his *Parental* Care, and *Providence*; and to open and extend the Hand of *Parental* Affection, and Protection, in favour of all his Children; irrespectively; and with Equality; and in just Proportion; and Measure; without Difference; or Distinction; or Preference; either of Persons or of *Sex*. And indeed common Justice seems to point out clearly, and strongly, that the whole Substance of the

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Parent

Parent should not be appropriated, or absorbed, by (or be solely bestowed upon) a *single Child*; was it not for this Reason, *that* Lands of Inheritance are not easily, or conveniently, *partible*; and, that it is supposed to conduce mainly and principally to the Glory, Grandeur, Strength, and to the general Convenience and Emolument of the Realm, by all reasonable and befitting Ways, and Means, not to suffer or to allow any Division, or *Discerpibility*, with relation to Lands and Inheritances; because the preventing this Diffipation, or Discerpibility, offers and affords a powerful Inducement, and Incentive, to Men to be the *Founders* of their Families, and Houses, *with Fame*; and also, by this very means, the Rents and Services which were formerly due to the Crown, were better paid, and performd: Wherefore this Partiality (and *Monopoly*) in favor of the *eldest Male* (unjust and unnatural as it is; upon every other Account;) takes place among many of the most civilized, and *best policed* Nations; for the sake of *Unity of Possession*; and for the sake of such *political* Ends, and

5

Respects;

Respects; as have been already mentiond. For when *Unity of Possession* was considerd as *ancillary* and conducive to the Convenience and Happiness and Grandeur of the *State*, in the aforementioned Respects; the Devolution of the Inheritance *upon a single Person*, in order to it, became consequentially necessary.

AND it is extremely clear from the whole *Oeconomy*, Order, and Disposition of Things; *in favor of the Heir*; (as well with relation to the Descent and Transmission of Lands, and Tenements, held in private *Propriety*; as with relation to the Descent and Transmission of the Crown; itself;) that the Law gives *more* to the *Heir*; than he is intitled, by the Rules of *natural Equity*, to have; and *less* to the Brothers and Sisters of *such Heir*; than they ought, by the same Rules of natural Justice, to have; because the *Policy* of the Law is such, in all Cases, that it will sooner suffer an Injury, or Mischief, to be done, *to particular Persons*; than an Inconvenience to redound or accrue to the

Public ; which *according to the Circumstances and Conjunctures of former Times*, it was supposed, might happen if the *Right of Heirship*, to Lands and Tenements, had not been made to *center with a single Person* ; but had been made *partible and distributable* among many. And now, as it is manifest from what hath been premised, that the Devolution and Descent of the Inheritance *upon a single Person*, was originally calculated for the sake of grave and political Respects of Government ; such as *Unity of Possession, &c* ; and was not originally, or intentionally, introduced *in favor of the Claim of Primogeniture* ; or in favor of the Rights of any single Person ; and as it is aequally certain that the Circumstances of Things are much changed, and varied, in the Process and Revolution of several Ages ; by the abolishing of the very most of the *ancient Tenures* ; and by making Lands and Inheritances in Fee, *transferible* and alienable at the Discretion of the Proprietor ; and even by vesting the Tenant, or Proprietor, in Fee Simple, with a Power of entailing his Lands ; under certain

certain Limitations ; it seems worthy of the Attention and Consideration of the Legislature, whether it would not (in and under the Circumstances of the present Conjunction) be consistent with a true *political Justice* to enact that Lands of Inheritance in Fee, should be distributable and partible among the Relatives *in pari Gradu*, of every Person who dies intestate ; pursuant to the new Constitutions of *Justinian* ; the *Roman* Emperor ; but so ; and under such Modifications ; and Restrictions ; as not to prevent the Person who is seisd of them from entailing them ; if he is so minded ; either by *Deed* ; or by his last Will and Testament in Writing ; properly attested ; in such manner ; as every Person hath now a Power to do. And this very Licence, and Power, which now subsists, of making *Entails*, or Settlements by Deed, or by last Will and Testament, would be a most effectual Means of obviating and preventing that Dissipation, and crumbling to Pieces, of landed Estates ; that the Descent and Transmission of the Inheritance upon a *single Person* ; in such manner as we have described ;

described ; seems originally, and in its primary Institution, and Intention, ordaind: and calculated to prevent, and avoid. Here, perhaps, it may not be amiss to remark that as Estates, and Inheritances *in Fee*, were not originally saleable, or transferible, at the Common Law ; although they have been the *Subject* of every Day's Traffic and Barter for above two hundred Years last past ; in virtue and in consequence of the two Acts of Parliament above referd to (y) ; it very often happens, (by the Frequency, and Multiplicity, of Sales, and Purchases, of such Estates, and Inheritances, now-a-days ;) that the Relatives, or *Consanguinei*, in the respective Columns of the Kalendar, do not at this Time stand in the same Relation of Consanguinity, to the *Purchasor* ; as they generally, and for the very most part, did ; before the making those two Acts of Parliament above referd to ; and that consequently this very Circumstance, as well as the Consideration, that most of the *ancient Tenures* are now abolishd, by Act of

(y) See (b) fo. 31.

Parliament, may seem highly to deserve the Regard and Attention of the *Legislature*--- whether it may not be proper to introduce such Alterations into *this System*; as have been already proposed, and pointed out; in the foregoing Parts of this Discourse.

I HAVE now gone through this Affair with as much Brevity; as, I thought, was consistent with a due Perspicuity. And I shall think myself extremely happy if *this short Essay* is considerd, and interpreted, as the Effect, and Result, of a serious Desire to serve my *Fellow Citizens*; by drawing and fixing their Attention upon this Point; and if, at the same time, the *Plan* of this Discourse shall be thought to be governd with that Propriety of Proceeding, and Address; in all Respects; as not to have interfered, in the least, with the Duty I owe the Profession: I now therefore prepare and procede to take my Leave of the Reader in Hopes, that he will candidly interpret what is dictated by the most candid and ingenuous Motives, and Respects; and with a serious View of serving the *Public*
in

in a Point wherein the *Public* appears to be so eminently concern'd, and so very nearly interested, that if there is any Thing, but, even, commonly tolerable in this Performance, we may justly promise ourselves a favorable Attention, from the *Public*.

Non canimus SURDIS; respondent omnia SYLVAE.

ERRATA.

In the sixth Line of Page 55; instead of [first] read [third]. And in the fifth and eighth Lines of Page 72; instead of [*uterine*] read [*Semigerman*]. And note, that the two *Asterisks* which are placed in the lowest Class of the second Column, of the *English Kalendar*, should have been placed close together; and not separately; being intended to denote that every Brother and Sister is at the Distance of two Degrees, from each other.

N.B. The KALENDAR to be placed facing this Page; and pasted on a Leaf, that the Whole may fold out.

KALEN-

A Kalendar

First Column.

6. F.
Brothers of Great Grandfather.
Sisters of Great Grandfather.

5. E.
Brothers of Great Grandfather.
Sisters of Great Grandfather.

4. D.
Brothers of Grandfather.
Sisters of Grandfather.

3. C.
Brothers of Great Grandfather.
Sisters of Great Grandfather.

2. B.
Brothers of Grandfather.
Sisters of Grandfather.

1. A.
Brothers of Father.
Sisters of Father.

ar containing the Degrees of Consanguinity.

Column.	Second Column.	Third Column.
Grandfather's Grandfather. Grandfather's Grandfather. ***	6. Great Grandfather's Great Grandfather. Feme. *****	6. Brothers of Great Grandfather's Great Grandmother. Sisters of Great Grandfather's Great Grandmother. *****
Grandfather's Grandfather. Grandfather's Grandfather. Grandfather. Grandfather. **	5. Great Grandfather's Grandfather. Feme. *****	5. Brothers of Great Grandfather's Grandmother. Sisters of Great Grandfather's Grandmother. *****
Grandfather's Grandfather. Grandfather's Grandfather. Grandfather. **	4. Grandfather's Grandfather. Feme. *****	4. Brothers of Grandfather's Grandmother. Sisters of Grandfather's Grandmother. *****
Grandfather. Grandfather. Grandfather. Grandfather. *	3. Great Grandfather. Feme. ***	3. Brothers of Great Grandmother. Sisters of Great Grandmother. *****
Grandfather. Grandfather. Grandfather. Grandfather. *	2. Grandfather. Feme. **	2. Brothers of Grandmother. Sisters of Grandmother. ****
Father. Father. *	1. Father. Mother. *	1. Brothers of Mother. Sisters of Mother. ***
	CENTRAL CLASS. Any Person, Male or Female, who is proposed. Brothers. Sisters. * *	

THE KATHOLIC CHURCH

1871

KALENDARIUM,

SIVE

SCALA CONSANGUINITATIS.

<i>Columella Prima.</i>	<i>Columella Secunda.</i>	<i>Columella Tertia.</i>
AGNATI.	ASCENDENTES.	COGNATI.
6. F. Fratres Tritavi. Sorores Tritavi.	6. Tritavus. Tritavia.	6. Fratres Tritaviae. Sorores Tritaviae.
5. E. Atpatrui. Atamitae.	5. Atavus. Atavia.	5. Atavunculi. Atmaterterae.
4. D. Abpatrui. Abamitae.	4. Abavus. Abavia.	4. Abavunculi. Abmaterterae.
3. C. Propatrui. Proamitae.	3. Proavus. Proavia.	3. Proavunculi. Promaterterae.
2. B. Patrui Magni. Amitae Magnae.	2. Avus. Avia.	2. Avunculi Magni. Materterae Magnae.
1. A. Patrui. Amitae.	1. Pater. Mater.	1. Avunculi. Materterae.
CLASSIS CENTRALIS.		
Persona Proposita.		
Fratres. Sorores.		



